order. This he failed to do within the requisite period and it is claimed that fresh evidence only came to hand after the expiration of the period provided for the appeal. In the circumstances, upon an application by counsel for the applicant, I exercised the inherent power of the court to extend the time to appeal against the order. Very properly and very fairly, the learned senior federal counsel did not oppose the setting aside of the banishment order. As has been stated, the applicant had been under detention since November, 1966 on a warrant of detention prior to the expiration of a sentence of imprisonment of two years which he had been serving for armed robbery. This was followed, presumably after due inquiry, by the issue of a banishment order.

The mother of the applicant in her affidavit stated she was born in Kedah in 1925 and she holds a certificate of citizenship of the Federation of Malaysia, being citizenship No. 635525, under article 16 of the Federal Constitution. article 16 entitles "any person of or over the age of 18 years who was born in the Federation before Merdeka Day to be registered upon application to the Federal Government as a citizen" if he satisfies certain conditions set out therein. In view of the grant of the certificate to the mother, it must be taken as an accepted fact and conclusive evidence that the mother was born in the Federation and eligible to be registered as a citizen. Article 14 of the Federal Constitution provides that persons who are citizens by operation of law include "every person who, immediately before Merdeka Day, was a citizen of the Federation by virtue of any of the provisions of the Federation of Malaya Agreement 1948, whether by operation of law or otherwise."

The applicant, as stated in the affidavit of his mother, was born on the 10th September, 1942 at Bakar Arang, Sungei Patani in the State of Kedah and a certified extract of an entry relating to his birth was annexed as an exhibit to the affidavit of the applicant himself.

I now turn to the Kedah Nationality Enactment (No. 5 of 1371, equivalent to the year 1952), section 4 of which reads that

"on or after the prescribed date the persons ... shall be subjects of the Ruler by operation of law. They include, vide subsection (c), "any person born before on or after the prescribed date in the State one of whose parents was born in the Federation of Malaya."

Section 2 of Enactment No. 5 of 1371 defines "Federation of Malaya", in respect of any period prior to the first day of February, 1948, to mean any of the territories now comprised in the Federation of Malaya. It would be pertinent now to refer to clause 4 of the Federation of Malaya Agreement which reads:

"4. In pursuance of the Federation agreement there shall be established a Federation, comprising the Malay States and the Settlements, to be known as the Federation of Malaya or, in Malay, "Persekutuan Tanah Melayu", constituted in all respects in accordance with the provisions of that Agreement and this Order."

By virtue of article 14 of the Constitution, which I have read, and the Kedah Nationality Enactment, and the affidavits sworn to by his mother and himself, the applicant has satisfied me that he is a citizen by operation of law. The Banishment Ordinance only applies to persons who are not citizens of the Federation and subsection 5(3) clearly provides that it is within the competence of the court to set aside a banishment order upon proof that the applicant is a citizen of the Federation or an exempted person.

Perhaps it is little understood that various State Nationality Enactments have been passed since the Federation of Malaya came into existence in 1948, a great number of them in the year 1952. These revised nationality laws altered the position with regard to non-Malays who were born in the Malay States prior to 1948 (the position of those born in the Settlements being somewhat different). A person born in a Malay State before 1948 was a British protected person and the Rulers of the State could not then have non-Malays or non-Muslims as subjects of the Ruler. Since the formation of the Federation of Malaya in 1948, and finally, the achievement of Merdeka in 1957, the Rulers have come to adopt an enlightened attitude and decided to be more liberal and accord a certain degree of recognition and rights to persons born within their State.

Having heard that this applicant was in custody, with the shadow of a banishment order over his head since November 1966, (I have also learnt that he willingly granted a divorce to his wife so that she would not be left stranded and unprovided for, as he had entertained little hope of being released), I hope what I say here today will bring to the attention of the authorities dealing with banishment the primary duty to satisfy themselves of, and to make full inquiry into, the status of a person before taking action under the Banishment Ordinance. As I hold that the applicant is a citizen by operation of law, I set aside the order of banishment made by the Minister. The applicant is at liberty to leave the court forthwith.

Banishment order set aside.

Solicitors: *Triptipal Singh & Co.*

CHEONG KHEAN SHENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) July 9, 1967]

[Kuala Lumpur — Criminal Appeal No. 32 of 1970]

Penal Code, ss. 465 & 471 — Dishonestly using as genuine a forged Singapore identity card in order to exchange it for a Federation identity card.

Criminal Law and Procedure — Appeal — Duty of appellate court — Question of credibility of witnesses.

The appellant claimed to be the holder of a Singapore identity card. He applied to the registration officer for an exchange of his Singapore identity card. He was interviewed and he presented his Singapore identity card to the registration officer as evidence. That card was later verified from the Singapore registration office to be a forgery. He was charged with dishonestly using as genuine the Singapore identity card in order to exchange it for a Federation identity card and that he knew or had reason to believe it to be forged. He

was found guilty and was sentenced to 6 months' imprisonment.

Held, dismissing the appeal: (1) in this case there was sufficient "use" of the forged document as genuine;

(2) the duty of a court hearing an appeal from the decision of a lower court is to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of the witnesses come in question but with full liberty to draw its own inference from the facts proved and to decide accordingly;

(3) on the facts, any court acting reasonably would have come to the inescapable conclusion that at the time the identity card was alleged to be used, the appellant knew that it was a forgery.

CRIMINAL APPEARL.

T. Ariarajah for the appellant.

Ajaib Singh (Senior Federal Counsel) for the respondent.

Raja Azlan Shah J.: The charge against the appellant was that he dishonestly used as genuine a Singapore identity card in order to exchange it for a Federation identity card and that he knew or had reason to believe it to be forged.

The learned magistrate convicted him under section 471 of the Penal Code read with section 465 of the Penal Code and sentenced him to 6 months' imprisonment.

The facts of the case may now briefly be stated. The appellant claimed to be the holder of a Singapore identity card No. S.M. 08722. He applied to the registration officer Petaling Jaya for an exchange of his Singapore identity card. He was interviewed and he presented his Singapore identity card to the registration officer as evidence. The Singapore identity card was later verified from the Singapore registration office to be a forgery. The real Singapore identity card bearing that number was issued to a Chinese lady who gave evidence for the prosecution. There was therefore in this case sufficient "use" of a forged document as genuine. On these facts, the appellant was charged and convicted as stated earlier.

The defence was that the identity card was not forged; that his uncle, since deceased, had obtained it for him at the Singapore National Registration Office, that he never doubted its genuiness nor could he believe it to be forged. He therefore pleaded that he never knew, nor had reason to believe that the identity card was a forged document. He called no witness.

The first contention on behalf of the appellant was that his identity card is not forged, but I have no doubt that it is forged. The identity card told a lie about itself. The learned magistrate has given good and cogent reasons for his conclusion on the point and in my view, they correctly answer all the criticisms of the appellant.

It is next contended that the circumstances established in the case do not establish that the appellant knew or had reason to believe that the identity card which he was dishonestly using was forged. The mere fact that the identity card was forged would not conclude the matter unless it was also established that the appellant knew or had reason to believe that at the time it was alleged to be used it was a forgery. The learned magistrate found as a fact that at the time when the impugned identity card was obtained by his uncle he knew it was a forged document and that he retained that knowledge when he made the present application. Putting it in a compendious form, the learned magistrate was satisfied that at the time when the appellant "used" the forged document he knew that it was forged. I agree with his conclusion but not with his reasoning. The duty of a court hearing an appeal from the decision of a lower court is to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of the witnesses come in question but with full liberty to draw its own inference from the facts proved and to decide accordingly.

In the present case there is no question of the credibility of witnesses. The material facts so far as they are known, are not disputed; and this court is at liberty, and indeed, is bound to draw its own inference from them. It is sufficient to say that once one looks at the issues before the court, which one can gather from the facts which have already been stated, it is only too plain to conclude that there was no such uncle as the appellant had suggested and that there would therefore be no such person who had obtained the identity card for him; then taking the evidence as a whole, including that for the prosecution, any court acting reasonably would have come to the inescapable conclusion that at the time the identity card was alleged to be used the appellant knew that it was a forgery.

Appeal against conviction dismissed.

Appeal dismissed.

Solicitors: *T. Ariarajah & Co.*

OTHMAN BIN AHMAD v. PUBLIC PROSECUTOR

[F.C. (Azmi L.P., Gill and Ali F.JJ.) July 22, 1970]

[Kota Bharu — Federal Court Criminal Appeal No. 12 of 1970]

Criminal Law and Procedure — Trial — Murder — Summing up to jury — Burden on accused — Alleged omission to put defence to jury.

Criminal Law and Procedure — Murder — Trial of — Defences of provocation and self-defence — Alleged misdirection to jury on law of burden of proof.

Penal Code, s. 300, Exceptions.

Evidence Ordinance, 1950, s. 105 — Burden of proof — Direction to jury as to.

This was an appeal against the conviction of the appellant for murder. On appeal it was argued (a) that the learned trial judge had misdirected the jury as to the law in holding that the accused had a burden of proof to discharge by directing that "the burden of proving or satisfying you that the accused person only struck in self-defence is not as heavy as the prosecution burden of proving overall that the accused committed the offence of murder"; (b) that the learned trial judge failed to direct the jury to consider the possible verdict of culpable homicide not amounting to murder on the ground that the accused committed that act whilst deprived of the power of self-control by grave and sudden provocation. At the hearing of the appeal an additional ground was raised